

## **5.03.00.00 - HARDSHIP**

### **5.03.01.00 General**

Hardship is defined as a situation where unusual personal circumstances of an owner are aggravated by a proposed transportation facility and cannot be solved by the owner without acquisition by the State. There are two types of hardships:

- Those which occur in advance of the regular right of way acquisition process.
- Those which occur when the requirements for commencing the regular right of way acquisition process have been met, but funding and activity on the project have been deferred.

The Districts are authorized to approve both types of parcels for hardship acquisition.

Departmental practice is to investigate to determine need and to appraise and acquire the property with minimal delay. In some instances this may require extraordinary efforts such as obtaining independent staff appraisals. Owners of hardship parcels should receive full consideration and service consistent with normal acquisition procedures, including appropriate relocation assistance and sufficient time to consider State's offer. The District shall make the first written offer to the applicant within 90 days from the date of the DDD-R/W's approval letter or the Federal authorization if requested.

### **5.03.02.00 RAP Eligibility**

The District should notify the applicant in writing of the requirements for RAP eligibility when the hardship investigation commences. If the hardship application is not approved, the applicant should be informed of benefits that will be lost if applicant vacates prior to regular acquisition (first written offer). (See Exhibit 5-EX-04.) At the same time, it is important to ensure that double relocation payments are not made and Federal reimbursement is not lost. In line with this intent, if an application is approved and the applicant is forced to move prior to the time a written offer can be presented, the District must mail a Notice of Intent to Acquire to

preserve relocation eligibility. (See Forms RW 06-11, 13, and 14.) This letter should not be mailed until after approval of the hardship acquisition and should not be issued unless initiation of negotiations will commence less than 90 days subsequent to said Notice. This action will preserve the relocation eligibility of applicants and will avoid the possibility of creating more than one eligible relocatee.

### **5.03.03.00 Cessation of Hardship**

If it determines that a hardship no longer exists, the Acquisition Branch must immediately withdraw any outstanding offer to purchase and advise the owner of the right to appeal the case to the District Hardship Appeals Board. (See Sections 5.03.06.00 through 5.03.06.03.)

### **5.03.04.00 Guidelines for Processing Requests**

#### **5.03.04.01 Hardship Criteria**

The following minimal requirements must be met and documented if a hardship request is approved:

- Owner demonstrates need to dispose of property.
- Owner is unable to dispose of property at fair market value because of transportation facility plans.
- Owner cannot reasonably alleviate the hardship in the absence of the State's purchase.
- State's purchase will either partially or totally alleviate the hardship.

Inconveniences experienced by all or most owners along a route are not satisfactory reasons for hardship purchase (for example, an owner's simple desire to move to another area).

#### **5.03.04.02 Need to Dispose of Property**

Some of the reasons that may require an owner to sell immediately and that can result in a

significant financial loss in the absence of State purchase are listed in the table below entitled "Reasons Requiring Immediate Sale."

**5.03.04.03 Hardship Application Submittal**

The items listed in the table on the following page entitled "Submittal Items-Hardship Application" are considered when evaluating applications. At the initial meeting, the Agent informs the owner of the hardship criteria and

explains why it is necessary to submit this information.

To expedite requests, some of the requirements may be eliminated at the discretion of the District as indicated in the table.

If any hardship request appears to be unjustified, the District may request all the information, including a financial statement and tax returns.

<b>REASONS REQUIRING IMMEDIATE SALE</b>	
<b>Reasons</b>	<b>Explanation</b>
Medical	<ul style="list-style-type: none"> <li>• Advanced Age - needs care or assistance from others</li> <li>• Ambulatory Defects or Diseases - where present facilities are inadequate or cannot be maintained by owner</li> <li>• Major Disabilities</li> <li>• Doctor's Recommendation - to change climate or physical environments</li> <li>• Other Equivalent Disabilities</li> </ul>
Financial	<ul style="list-style-type: none"> <li>• Litigation - e.g. probate</li> <li>• Loss of Employment</li> <li>• Financial Distress - involving personal or business circumstances</li> <li>• Retirement - e.g., can't afford maintenance or has purchased retirement home</li> <li>• Pending Mortgage Foreclosure, Tax Sale, Etc.</li> <li>• Substantial Burden - maintenance, taxes, and/or rehabilitation costs</li> </ul>
Change of Work Location	Creates need to move
Non-Decent, Safe, and Sanitary Housing	For example, overcrowded living conditions if the occupancy level did not exceed DS&S standards at the time the owner originally purchased the property.
Monetary Loss - Income or Vacant Properties	<p>These properties may be acquired when the proposed project is the immediate cause of a monetary loss. The owner must demonstrate an adverse impact of the project on profitability of business or property. A careful review should be made considering such non-transportation influences as:</p> <ul style="list-style-type: none"> <li>• Inability to obtain financing</li> <li>• Inherent risk of ownership associated with this type of property.</li> <li>• Other outside factors affecting the profitability of the business operation or property ownership.</li> <li>• Local governmental regulations affecting development or rehabilitation, such as requiring the owner to set aside right of way from development, without the requirement for dedication.</li> </ul>

<b>SUBMITTAL ITEMS - HARDSHIP APPLICATION</b>		
<b>Item</b>	<b>Explanation</b>	<b>Circumstance</b>
Written Request or Statement	Outlining the reasons why owner(s) must sell the property at this time.	
Application	Completed and signed by owner(s). See Exhibit 5-EX-3.	
Financial Statement	See Exhibit 5-EX-10 or 5-EX-11	Not required (at the District's discretion) if the hardship request is due to medical problems, job transfer, advanced age, or retirement move.
Market Substantiation	<p>Evidence of reasonable attempt to market the property:</p> <ul style="list-style-type: none"> <li>• Copy of valid listing.</li> <li>• Statement from a broker citing reasons the property has not or cannot be sold.</li> <li>• Evidence or information obtained by the District.</li> </ul>	If there have been other unsuccessful attempts to sell the property on the project at fair market value, listing the property is not required. The District should state in its recommendation that the property cannot be sold at fair market value because of the proposed project.
Income Tax Authorization	Signed authorization to obtain a copy of Federal and State income tax returns (Exhibits 5-EX-5 and 5-EX-6). The District secures copies of the latest tax returns if additional documentation is needed.	Optional if the District is satisfied with all the financial information submitted by applicant.
Doctor's Statement or Equivalent		Required if hardship request is based on a medical reason.
Verification from Employer		Required if hardship request is based on a transfer of employment.
Index Map and Plat Map	Showing affected parcel in relation to project right of way. Maps should be 11"x17" if possible.	
FNM-76	Copy of the request for Federal participation if applicable.	
Hazardous Waste Statement	Describing potential of hazardous waste at the property, if any.	
District Approval Letter		
Categorical Exemption/ Exclusion Determination	And required statement.	
Review and Written Approval of Regional Legal Office.	Determines if acquisition would influence environmental assessment of proposed project.	Required if project is not environmentally cleared.

The District is responsible for seeing that the information submitted is accurate and appropriately documents the request; e.g., a doctor's letter or affidavit from employer.

#### **5.03.04.04 Documentation of Files**

For each application, the District maintains a file that becomes part of the parcel file upon commencement of acquisition. A parcel diary is initiated when application is made. Care should be taken to ensure that reasons for recommending approval or denial of application are clearly outlined in the diary or file. The date of notification of requirements for RAP eligibility shall be entered following the initial contact with the applicant. The application and other items submitted in support of the hardship are to be retained in the file. (See Section 5.03.04.03.)

The DDD-R/W is responsible for approving or denying each application. Statements of the District's action are made by a signed entry in the parcel diary. The following should be explained and included as part of the entry:

- Basis of decision to accept or deny the application.
- Fact that file has been reviewed prior to approval or denial and that reviewer is familiar with the contents of the file.

#### **5.03.04.05 Notification of Approval or Denial**

The Department considers hardship requests to be sensitive since the outcome of a request (approval/denial) could have a significant effect on the applicant. The District must ensure that proper notification is given as follows:

- **Request Approved** - the District notifies the applicant promptly by telephone and makes an entry in the diary.
- **Request Denied** - the District sends a letter to the applicant.

When FHWA approval is required, the telephone notification is made after the FHWA has

authorized an FNM-76 for the subject parcel. The responsibility for implementing this procedure rests with the DDD-R/W in each District.

#### **5.03.04.06 Negotiation Alternatives**

If negotiations are unsuccessful, the District should either:

- Consider the merits of an Administrative Settlement.
- Explain the condemnation process to the owner. The Agent should inform the owner that if they wish the State to condemn the property, they should send a letter to that effect. The State will then proceed with an action in eminent domain. If owner wishes, the State could prepare such a letter on owner's behalf (see Exhibit 5-EX-7). A copy of the letter shall be submitted with the District's request for the CTC resolution.
- Withdraw the offer in writing. It is important that all offers of relocation assistance or payments to owners and tenants be formally withdrawn in writing no later than 10 days from the date of the determination not to acquire (see RAP Chapter for procedures to follow in withdrawing RAP offers).

#### **5.03.04.07 Vacation of Property**

The contract will require grantors to vacate the property within 120 days from the date of the close of escrow, providing replacement housing is available. See Section 8.09.15.00 of the Acquisition Chapter for appropriate clauses and commentary on application.

#### **5.03.05.00 Disposition of Financial Information**

The District shall maintain confidentiality of the financial statement and income tax returns and permit only authorized personnel to have access to this information. Authorized personnel are those who process the application and those who make the final decision to approve or disapprove the application. While processing the application, the Agent shall store this information

in the working file and shall not leave it in the open on an unattended desk.

The Agent shall note in the parcel diary when the financial information was received. This is essential to establish that the information was in State's possession before a decision was made on the application. Upon final disposition of the application, this information shall be returned by mail to the applicant and so noted in the parcel diary. If the application is denied, the applicant should be advised in the denial letter that the returned material must be resubmitted on appeal, if any. If for some reason this information cannot be returned, it shall be destroyed and so noted in the parcel diary.

#### **5.03.06.00 Hardship Appeals**

Applicants who have been denied by the Department shall have the opportunity to have their situations considered by an appeals board.

#### **5.03.06.01 Appeals Board**

Each District shall establish and maintain a Hardship Appeals Board consisting of three members:

- DDD-R/W or a Supervising Right of Way Agent.
- Project Development Branch representative.
- Legal Division representative where available.

Where legal participation is not practical, the third member shall be chosen by and serve at the discretion of the DD. If a member of the Appeals Board is unable to participate in the particular appeals case being reviewed (e.g., due to absence or being personally involved with the case so as to prevent unbiased judgment), the DD shall appoint a substitute member to the Board for the case.

#### **5.03.06.02 Eligibility**

The District shall notify all applicants whose requests have been denied that they can appeal the decision in writing to the District Appeals Board. Exhibit 5-EX-12 should be completed by the applicant. The file shall be documented that

the applicant was advised of the opportunity to appeal the request and to appear personally before the Board.

#### **5.03.06.03 Appeals Board Action**

The Board reviews the file and documents presented by the applicant, including personal presentation by the applicant if requested, to determine if minimum requirements per Section 5.03.04.00 have been met.

After a careful review of the circumstances, the Board shall prepare a summary of facts and findings and submit it with the Board's recommendation to the DORW for processing and final disposition. The DORW transmits the final decision to the DDD-R/W or a designee who shall notify the applicant of the final decision.